

## REMARKS

This Response is submitted in reply to the final Office Action dated August 15, 2008. No fee is due in connection with this Response. The Director is authorized to charge any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 115808-365 on the account statement.

Claims 1, 3-4, 6, 8, 10-11, 14, 16 and 23-64 are pending in this application. Claims 2, 5, 7, 9, 12-13, 15, 17 and 17-22 were previously canceled. Claims 23-62 were previously withdrawn. In the Office Action, Claims 1, 4, 6, 8 and 10 are rejected under 35 U.S.C. §102. Claims 3, 11, 16 and 63-64 are rejected under 35 U.S.C. §103. For the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1, 4, 6, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,197,361 to Anantharaman et al. ("*Anantharaman*"). Initially, Applicants note that the previous rejections of the claims under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,592,033 to Anaantharaman et al. ("*Anantharaman II*") were withdrawn in the Non-Final Office Action dated February 5, 2008. Since *Anantharaman* is a continuation of *Anantharaman II*, the two references share the same disclosure. As such, Applicants submit that the current rejection in view of *Anantharaman* is also improper and respectfully traverse it for at least the reasons set forth below.

Independent Claim 1 recites, in part, a thermally extruded plant material that includes one or more phytochemical agents capable of inhibiting at least one of enzymatic and transcriptional activity to inhibit inflammation in a mammal. For example, Applicants have surprisingly discovered that upon thermal extruding, certain plants and/or plant extracts thereof can be generated with enhanced inhibition of enzyme activity and/or transcription activity in mammals which is believed to reduce the risk of inflammation. See, specification, page 5, lines 23-30. Thus, structurally the present claims require, in part, a plant material thermally extruded to inhibit at least one of enzymatic and transcriptional activity to treat inflammation. These are significant structural advantages, considering that the inflammation inhibiting nature of thermally extruded plant material of the present claims is a unique aspect of the invention. In

contrast, Applicants respectfully submit that *Anantharaman* fails to disclose or suggest every element of Claim 1.

Applicants respectfully submit that *Anantharaman* fails to disclose or suggest every element of Claim 1. For example, Applicants respectfully submit that *Anantharaman* fails to disclose or suggest a composition comprising one or more phytochemical agents capable of inhibiting at least one of enzymatic and transcriptional activity to inhibit inflammation in a mammal, wherein the one or more phytochemical agents is selected from the group consisting of sesquiterpene lactones, prebiotic fibers, dietary agents, and combinations thereof. Applicants respectfully disagree with the Patent Office's assertion that *Anantharaman* discloses that "chicory comprise of sesquiterpene lactones in a concentration of at least 0.5% by weight." See, Office Action, page 3, lines 4-6. The Patent Office cites column 1, lines 62-67; column 2, lines 21-65 and claims 1-7 of *Anantharaman* to support this statement. However, *Anantharaman* teaches the need to destroy or remove these sesquiterpene lactones. See, *Anantharaman*, col. 6, lines 30-34. Furthermore, contrary to the Patent Office's assertion, the sections of *Anantharaman* cited by the Patent Office does not disclose that the sesquiterpene lactones are still present. In fact, the final mixture is analyzed and "[n]o sesquiterpene lactones are detected". See, *Anantharaman*, col. 7, lines 29-31. The sesquiterpene lactones revealed in the analysis were only in the chicory starting ingredient and not in the final mixture. See, *Anantharaman*, col. 7, lines 31-34. Therefore, *Anantharaman* fails to disclose sesquiterpene lactones present in the extract.

Applicants further submit that *Anantharaman* fails to disclose or suggest a thermally extruded plant material that includes one or more phytochemical agents capable of inhibiting at least one of enzymatic and transcriptional activity to inhibit inflammation in a mammal. As discussed above, *Anantharaman* fails to disclose sesquiterpene lactones present in the extract capable of inhibiting at least one of enzymatic and transcriptional activity to inhibit inflammation in a mammal. Therefore, *Anantharaman* must also fail to disclose thermally treating the plant material in order to inhibit inflammation.

As discussed previously, the present claims require, in part, a plant material that is thermally extruded to inhibit at least one of enzymatic and transcriptional activity to inhibit inflammation in a mammal. By contrast, *Anantharaman* discloses a composition without any sesquiterpene lactones left in the composition to inhibit cyclooxygenase activity to inhibit

inflammation in a mammal. These are significant structural differences, considering that the inflammation inhibiting nature of the present claims is a unique aspect of the invention and is not disclosed or suggested by *Anantharaman*. For the reasons discussed above, Applicants respectfully submit that Claims 1 and Claims 4, 6, 8 and 10 that depend from Claim 1 are novel, non-obvious and distinguishable over *Anantharaman*.

Accordingly, Applicants respectfully request that the rejection of Claims 1, 4, 6, 8 and 10 under 35 U.S.C. §102 be withdrawn.

In the Office Action, Claims 1, 3-4, 6, 8, 10-11, 14, 16, 18 and 63-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Anantharaman* in view of U.S. Patent 5,905,089 to Hwang et al. ("*Hwang*"). Applicants respectfully submit that this rejection is improper and respectfully traverse it for at least the reasons set forth below.

Independent Claim 1 requires, in part, a thermally extruded plant material that includes one or more phytochemical agents capable of inhibiting at least one of enzymatic and transcriptional activity to inhibit inflammation in a mammal. Similarly, independent Claim 11 requires, in part, a thermally extruded plant material that includes one or more phytochemical agents capable of inhibiting at least one of enzymatic and transcriptional activity to treat inflammation in a mammal. Furthermore, independent Claim 63 requires, in part, a thermally extruded plant material, the active fragment including  $\alpha$ -methylene- $\gamma$ -butyrolactone, wherein the active fragment in an effective amount is capable of inhibiting at least one of enzyme and transcriptional activity to inhibit inflammation. Applicants have surprisingly discovered that upon thermal extruding certain plants and/or plant extracts thereof can be generated with enhanced inhibition of enzyme activity and/or transcription activity in mammals which is believed to reduce the risk of inflammation. See, specification, page 5, lines 23-30. In contrast, Applicants respectfully submit that there exists no reason why the skilled artisan would combine the cited references to arrive at the present claims.

As discussed above, structurally, the present claims require, in part, a plant material thermally extruded to inhibit at least one of enzymatic and transcriptional activity to treat inflammation. Applicants have surprisingly discovered that upon thermal extruding, certain plants and/or plant extracts thereof can be generated with enhanced inhibition of enzyme activity and/or transcription activity in mammals which is believed to reduce the risk of inflammation. See, specification, page 5, lines 23-30. These are significant structural differences, considering

that the inflammation inhibiting nature of thermally processed plant material of the present claims is a unique aspect of the invention and is not disclosed or suggested in the prior art.

Applicants respectfully submit that the skilled artisan would have no reason to combine the cited references to obtain the present claims because the cited references teach away from each other and the claimed invention. For example, as previously discussed, *Anantharaman* discloses destroying or removing sesquiterpene lactones. Specifically, *Anantharaman* teaches the need to “destroy or remove” these sesquiterpene lactones. See, *Anantharaman*, col. 6, lines 30-34. In contrast, *Hwang* is entirely directed toward the use of sesquiterpene lactones obtained from plant material. See, *Hwang*, Abstract.

Further, references are not properly combinable or modifiable if their intended purpose is destroyed. For instance, if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). This is exactly the case where *Anantharaman* is directed toward a matrix making up a cereal product that must be gelatinized in order to “remove or destroy the sesquiterpene compounds” present in the plant material, see, *Anantharaman*, col. 6, lines 30-34, and where *Hwang* is entirely directed toward the use of sesquiterpene lactones obtained from plant material, see, *Hwang*, Abstract.

Applicants respectfully submit that the claims must be viewed as a whole as defined by the claimed invention and not dissected into discrete elements to be analyzed in isolation. *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983); *In re Ochiai*, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995). Further, one should not use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d at 1075. (Fed. Cir. 1988).

For at least the reasons discussed above, the skilled artisan would have no reason to combine *Anantharaman* and *Hwang* to arrive at the present claims. Applicants respectfully submit that the combination of *Anantharaman* and *Hwang* is improper.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 3, 11, 16 and 63-64 be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

BELL, BOYD & LLOYD LLP

BY 

Robert M. Barrett  
Reg. No. 30,142  
Customer No. 29157  
Phone No. 312-807-4204

Dated: November 12, 2008